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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/615,977	07/09/2003	Barry Jay Anderson	9119R2	1290

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EXAMINER

GARBER, CHARLES D

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/615,977

Applicant(s)

ANDERSON ET AL.

Examiner

Charles D. Garber

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☒ Claim(s) 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 7/9/03, 5/28/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Double Patenting

Claims 1-16 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 of copending Application No. 10/377,070. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 10/377,070.

Claim 1 in both the instant invention and copending application recite:

"A simulation press comprising:

 a fixed main body;

 a carriage associated with said main body for movement relative to said

main body;

a first plate coupled to said fixed main body and being adapted to engage a workpiece;

a second plate coupled to said carriage for movement with said carriage, said second plate also being adapted to engage said workpiece;

at least one motor apparatus coupled to said fixed main body and said carriage for effecting movement of said carriage relative to said main body;

a drive controller coupled to said at least one motor apparatus for controlling the operation of said at least one motor apparatus in response to feedback from at least one feedback sensor so as to cause said second plate to move relative to said first plate..."

wherein the copending application claim then recites "...such that said first and second plates engage **said workpiece and simulate a ring rolling operation on said workpiece**" [Examiner emphasis]

whereas the instant invention claim then recites "...such that said first and second plates engage **at least one point site on said workpiece so as to simulate compression loading of a point site on a workpiece in a nip type process.**"

Examiner considers that engaging at least one site point on the workpiece is inherent in both inventions and that ring rolling press operations on a workpiece inherently involve some amount of compression loading so the only other apparent difference is between simulating a "ring rolling operation" as in the copending application and simulating a "nip type process" as in the instant invention.

The specification explains a nip type process as “compression loading on a point site...such as a fusion bonding operation **effected using first and second rolls**”.

Similarly, Merriam-Webster OnLine defines nip as “the region of a squeezing or crushing device (as a calendar) where the rolls or jaws are closest together.

The nip type operation disclosed by the Applicant is only of the roller type rather than of the type carried out using jaws. Therefore, Examiner considers the simulation of a nip type operation anticipated by the Applicant to be equivalent to the simulation of a ring rolling operation as in the copending application.

Depending claims 2-16 of the instant invention are identical to depending claims 2-16 of the copending application and are therefore rejected for the same reason.

This is a provisional obviousness-type double patenting rejection.

Allowable Subject Matter

Claims 18-20 allowed.

Claim 17 is objected to as being dependent upon a rejected base claim, but would be allowable if written in independent format to include all the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

The use of force feedback to control press rates is well known. Schulz et al. (US Patent 4,420,958), Strong et al. (US Patent 5,974,853) and Weiss (EP 1 043 579 A1) provide examples of how force feedback using load cells or distance may be used to control the rate and amount of translational force applied to a workpiece during forming.

Biörnstad et al. (US Patent 4,074,624) and Moore (US Patent 5,562,027) provide examples of similar devices associated with roller type presses.

The references however do not teach press plates simulating or in any way reproducing the forces in a nip type process which is substantially the same as a roller operation.

Examiner gave substantial weight to the limitations regarding the controller that causes this type of compression loading with a plate press and a method that employs it using a plate press.

When considering the "process" or operation of applying nip or roller type loads Examiner did not consider one of ordinary skill would interpret the limitation broadly.

For example, Examiner did not consider that one of ordinary skill would take the limitations simply to mean applying some static unidirectional load that equaled a single load value one might find at some point on the workpiece in a rolling operation. Nor did Examiner consider one of ordinary skill could reasonably infer Applicant intended to physically roll or rotate the "plates" to simulate rollers rolling to cause nip pressures. Applicant's use of the term "process" clearly implied the loading was dynamic or time varying and also linear in space as would be expected of a plate press. Examiner looked to the specification for what additional meaning was attached to the term "process" of applying nip or roller types loads. Applicant discloses that position and velocity of the plates relative to each other is characterized by movement depicted in figures 10A and 10B which is based on translating the relative time varying position and

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velocity of corresponding roller faces to flat plates essentially through a coordinate transformation. This is not suggested in the prior art.

Severin et al. (US Patent 5,167,799) teaches simulating forces in a belt filter press (which is considered similar to a ring roller press, or in other words a wringer press or calendar press). However, the curved static pressure face 113 and belt 115 may not be considered to be equivalent to the plates as in the instant invention and Severin does not use a feedback device to control the applied forces.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

A handwritten signature in black ink, appearing to be 'C. J. L.', located at the bottom right of the page.